

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

OSCIENT PHARMACEUTICALS
CORPORATION and GUARDIAN
II ACQUISITION CORPORATION,

Plaintiffs,

V.

ANTARA BIOSCIENCES INC.,

Defendant.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

COMPLAINT FOR FEDERAL TRADEMARK INFRINGEMENT

Plaintiffs, Oscient Pharmaceuticals Corporation (“Oscient”) and Guardian II Acquisition Corporation (“Guardian”), in their complaint against Defendant, Antara Biosciences Inc. (“Antara Biosciences”), allege and state as follows:

THE PARTIES

1. Plaintiff Oscient is a company organized and existing under the laws of the State of Massachusetts, having its principal place of business at 1000 Winter Street, Suite 2200, Waltham, MA 02451.

2. Plaintiff Guardian is a company organized and existing under the laws of the State of Delaware, having its principal place of business at 1000 Winter Street, Suite 2200, Waltham, MA 02451.

3. Defendant Antara Biosciences is a company existing under the laws of the State of Delaware, having its principal place of business at 2375 Garcia Avenue, Mountain View, CA 94043.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367(a).

5. Venue is proper in this jurisdiction district pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant is a Delaware corporation and transacts business in the State of Delaware.

FACTUAL BACKGROUND

6. Oscient is a commercial-stage biopharmaceutical company. Since 2004, Oscient has marketed and sold FDA-approved pharmaceutical products throughout the United States through its national sales force.

7. During 2001, Reliant Pharmaceuticals, Inc. (“Reliant”) began developing a cardiovascular formulation (fenofibrate) that came to be known as ANTARA. The ANTARA preparation was approved by the FDA on November 30, 2004 for use as a therapeutic treatment for hyperlipidemia (elevation of lipids in the blood), high blood cholesterol and high triglycerides.

8. On June 17, 2004 Reliant applied for federal trademark registration of the mark ANTARA covering goods described as “pharmaceutical preparations for the treatment of cardiovascular conditions.” The mark was published for opposition on October 25, 2005 and became registered on June 6, 2006 as U.S. Registration No. 3,101,801. See Exhibit “A.”

9. On or about August 18, 2006 Oscient, as part of an eighty-two million (\$82,000,000) acquisition, through a wholly-owned Delaware incorporated entity known as Guardian II Acquisition Corporation (“Guardian”) purchased from Reliant the United States rights to the marketing and sale of ANTARA (fenofibrate) capsules, as part of a pharmaceutical

product franchise including all rights to the trademark ANTARA and all goodwill associated therewith. An assignment transferring ownership of the ANTARA mark and registration was executed on August 18, 2006 and recorded by the U.S. Patent and Trademark Office on September 27, 2006. See Exhibit “B.”

10. Plaintiff Guardian is the owner of all right, title and interest to the ANTARA trademark. Its parent company, Oscient, is the authorized user of the ANTARA trademark in interstate commerce and in commerce undertaken in this jurisdiction.

11. In 2006, sales of ANTARA branded products by Oscient in the United States were in excess of forty million dollars \$40,000,000. In 2007, sales under the ANTARA brand have been projected to amount to approximately fifty-five million (\$55,000,000).

12. Since acquiring rights to the ANTARA Mark and product, Oscient has invested millions of dollars in advertising and marketing the product to medical practitioners and cardiac patients throughout the U.S. See Exhibit “C. “

13. As a result of longstanding and extensive use and wide recognition among medical practitioners and consumers of pharmaceutical products, Plaintiffs’ ANTARA trademark has become distinctive as an indication of source of Plaintiffs’ fenofibrate products.

14. As a result of the extensive and substantial advertising and sales of products under the ANTARA trademark, and the maintenance of premium quality standards relating thereto, the ANTARA mark has become well and favorably known to the American public as the distinctive indication of origin for Oscient’s fenofibrate products.

15. Upon information and belief, Defendant Antara Biosciences was incorporated in Delaware on December 16, 2005.

16. Defendant has knowingly and willfully used the ANTARA and/or ANTARA BIOSCIENCES marks/names in commerce, marks/names that are confusingly similar to Plaintiffs' ANTARA trademark, and appears likely to increase that use dramatically in the future.

17. Upon information and belief, Defendant recently adopted the ANTARA and/or ANTARA BIOSCIENCES marks/names and is presently undertaking activities in the field of pharmacogenomics (the study of individual genetic differences in response to drug therapies).

18. Defendant maintains an active web site utilizing the domain name *antara-bio.com*. Content posted on the web site states that Defendant's "mission is to (1) harness cutting edge technologies to make people healthier and safer; (2) produce innovative, robust and reliable products ..." See Exhibit D.

19. According to the records of the U.S. Patent and Trademark Office, on December 11, 2006, Defendant Antara Biosciences filed nine applications seeking registration of the marks ANTARA, ANTARA BIOSCIENCES and ANTARA BIOSCIENCES and Design covering goods/services described as "scientific and technical apparatus" in International Class 9, "medical diagnostic apparatus" in International Class 10, and "scientific and technological services and related research and design" in International Class 42. The applications were based on Defendant's intent-to-use the marks in United States commerce. See Exhibit E.

20. Plaintiffs' June 11, 2004 constructive date of first use of the ANTARA mark is well prior to any date of first use of ANTARA and/or ANTARA BIOSCIENCES that can be claimed by Defendant.

21. Upon learning of Defendant's applications for registration of the ANTARA, ANTARA BIOSCIENCES and ANTARA BIOSCIENCES and Design marks, Plaintiffs, through counsel, contacted Defendant on January 22, 2007 requesting that Defendant cease using the confusingly similar ANTARA and/or ANTARA BIOSCIENCE marks/names.

22. Defendant responded by refusing to comply with Plaintiffs' request to cease using the marks/names.

23. Consumers are likely to be confused by the similarity of Defendant's use of the ANTARA and ANTARA BIOSCIENCES marks in the field of medical and diagnostic devices and pharmacogenomic-related research services and Oscient's ANTARA mark for pharmaceutical products. Furthermore, consumers are likely to mistakenly believe that Defendant's ANTARA and ANTARA BIOSCIENCES marks/names are manufactured by, developed by, related to, endorsed by and or sponsored by Plaintiffs due to their use of the ANTARA mark on pharmaceutical products.

24. By and through the aforementioned activities, Defendant is engaged in the unlawful use of the ANTARA and ANTARA BIOSCIENCE marks/names in commerce.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

25. Plaintiffs repeat and re-allege each and every allegation of paragraphs 1 through 24 as though fully set forth herein.

26. Oscient, through its wholly owned subsidiary, Guardian, is the exclusive user of the federally registered ANTARA trademark and is the prior user of the ANTARA mark in connection with pharmaceutical and medical-related products in the United States.

27. The federally registered ANTARA trademark identifies the source of Plaintiffs' pharmaceutical products.

28. Defendant has used the ANTARA and/or ANTARA BIOSCIENCES marks/names in interstate commerce in association with the offering and rendering of "scientific and technological services and related research and design" services is currently using the foregoing marks/names.

29. Defendant's unlawful acts constitute trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114.

30. Defendant's knowing and unauthorized use of ANTARA and/or ANTARA BIOSCIENCES marks/names that are confusingly similar to the ANTARA trademark is likely to cause confusion or to cause a mistake or to deceive the purchasing public and constitutes trademark infringement in violation of the Lanham Act, 15 U.S.C. §§ 1051 through 1137, specifically § 32(a) of the Lanham Act, 15 U.S.C. § 1114.

31. As a direct consequence of Defendant's unlawful acts and conduct, Plaintiffs have suffered and will continue to suffer damage to their business, reputation and goodwill for which Plaintiffs are entitled to relief.

32. By reason of Defendant's unlawful acts and practices, Defendant has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief.

COUNT II
FEDERAL UNFAIR COMPETITION

33. Plaintiffs repeat and re-allege each and every allegation of paragraphs 1 through 32 as though fully set forth herein.

34. Defendant's use of the ANTARA and/or ANTARA BIOSCIENCES marks/names in connection with medical and pharmaceutical-related products and services is likely to cause confusion or to cause a mistake or to deceive as to affiliation, connection or association and constitutes false designation of origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

35. The aforesaid acts constitute federal unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

36. As a direct consequence of Defendant's unlawful acts and practices, Plaintiffs have suffered, will continue to suffer and/or is likely to suffer damage to their business reputation and goodwill, for which Plaintiffs are entitled to relief.

37. By reason of Defendant's unlawful acts and practices, Defendant has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law and for which Plaintiffs are entitled to injunctive relief.

COUNT III
DELAWARE STATUTORY DECEPTIVE TRADE PRACTICES

38. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 37 as though fully set forth herein.

39. Defendant's use and promotion of the ANTARA and/or ANTARA BIOSCIENCES marks/names in connection with medical and pharmaceutical-related products and services in the United States and in this jurisdiction constitutes, *inter alia*, a passing off of its goods/services; causes a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval of its goods/services; causes a likelihood of confusion or of misunderstanding as to affiliation, connection, or association with another; represents that its

goods/services have sponsorship or approval that they do not have; engages in conduct which similarly creates a likelihood of confusion or of misunderstanding within the meaning of the Uniform Deceptive Trade Practices Act as enacted at 6 *Del. C.* § 2532.

40. As a direct consequence of Defendant's unlawful acts and practices, Plaintiffs have suffered and will continue to suffer damage to their business reputation and goodwill, for which Plaintiffs are entitled to relief.

41. By reason of Defendant's unlawful acts and practices, Defendant has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law and for which Plaintiffs are entitled to injunctive relief.

WHEREFORE, Plaintiffs request the following relief:

A. That Defendant, its officers, directors, shareholders, principals, agents, servants, employees, attorneys and related companies, and all persons in active concert or participation with one or more of them, be preliminarily and permanently enjoined and restrained from unlawfully using the ANTARA and ANTARA BIOSCIENCES marks/names and any mark/name that is confusingly similar to ANTARA in connection with any and all biological/medical/pharmaceutical-related goods and services.

B. That this Court award Plaintiffs damages adequate to compensate Plaintiffs for Defendant's acts of trademark infringement and unfair competition.

C. That Plaintiffs be awarded actual damages and lost profits in an amount to be proven at trial.

D. That Defendant be required to account for any profits attributable to their infringing acts.

E. That Plaintiffs be awarded the greater of three times Defendant's profits or three times any damages sustained by Plaintiffs and prejudgment interest.

F. That punitive damages be awarded to Plaintiffs.

G. That all products, labels, signs and advertisements in Defendant's possession bearing the ANTARA and/or ANTARA BIOSCIENCES marks/names or any confusingly similar word, term, name, symbol, device or combination thereof that is found in violation of the Lanham Act or any reproduction, counterfeit, copy or simulation thereof shall be delivered up by Defendant and destroyed.

H. Defendant be required to pay Plaintiffs' costs of this action together with reasonable attorneys' fees and disbursements.

I. Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand trial by jury of all issues triable of right by a jury.



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Thomas H. Kovach (#3964)

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P.O. Box 1709

Wilmington, DE 19801-1151

Telephone No. 302.777.6500

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Philadelphia, PA 19103-2799

Telephone No. 215.981.4000

Attorneys for Plaintiffs

Oscient Pharmaceuticals Corp. and

Gaurdian II Acquisition Corp.

EXHIBIT “A”

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 3,101,801

United States Patent and Trademark Office

Registered June 6, 2006

**TRADEMARK
PRINCIPAL REGISTER**

ANTARA

RELIANT PHARMACEUTICALS, INC. (DELA-
WARE CORPORATION)
110 ALLEN ROAD
LIBERTY CORNER, NJ 07938

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: PHARMACEUTICAL PREPARATIONS FOR
USE IN THE TREATMENT OF CARDIOVASCULAR
CONDITIONS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51
AND 52).

SN 78-433,786, FILED 6-11-2004.

FIRST USE 2-1-2005; IN COMMERCE 2-1-2005.

RONALD MCMORROW, EXAMINING ATTORNEY

EXHIBIT “B”

EXECUTION COPY

ASSIGNMENT OF TRADEMARK

This **ASSIGNMENT OF TRADEMARK** (this "Assignment of Trademark") is made as of this 18th day of August, 2006, by and between Reliant Pharmaceuticals, Inc., a Delaware corporation ("Reliant"), and Guardian II Acquisition Corporation, a Delaware corporation ("Oscient").

WHEREAS, Reliant, Oscient and Oscient Pharmaceuticals Corporation, a Massachusetts corporation, have entered into that certain Asset Purchase Agreement, dated as of July 21, 2006 (the "Asset Purchase Agreement");

WHEREAS, Reliant has adopted and used and is using in commerce the mark "Antara®" (registration no. 3101801), together with all registrations and applications for registration thereof, all common law rights with respect thereto, and all rights to sue and recover for past, present and future infringement thereof (the "Product Trademark"); and

WHEREAS, pursuant to the Asset Purchase Agreement, Reliant wishes to transfer to Oscient, and Oscient wishes to acquire from Reliant, the Product Trademark and the goodwill related thereto.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed that:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this Assignment of Trademark shall have the meanings set forth in the Asset Purchase Agreement.

2. Conveyance and Acceptance. Reliant hereby assigns, transfers and conveys to Oscient Reliant's entire right, title and interest in and to the Product Trademark, including, but not limited to, all benefits, privileges, causes of action, and remedies relating to the Product Trademark, including, without limitation, the exclusive rights to (a) apply for and maintain all registrations, renewals and/or extensions thereof, (b) bring actions and recover damages for past, present and future infringement thereof, (c) grant licenses or other interests therein, and (d) otherwise fully and entirely stand in the place of Reliant in all matters related thereto. The foregoing includes, and Reliant hereby assigns, transfers and conveys to Oscient, all goodwill symbolized by the Product Trademark. Oscient accepts such assignment, and assumes (and shall pay, perform and discharge when due) all obligations with respect to the Product Trademark from and after the date hereof.

3. Further Action. Reliant agrees, at Oscient's expense, to do all acts and take such further action, including the execution and acknowledgment of such additional documents as Oscient may reasonably request to carry out and fulfill the purposes and intent of this Assignment of Trademark.

4. Miscellaneous.

(a) This Assignment of Trademark shall be binding upon and inure to the benefit of the parties hereto, and their permitted successors in interest and assigns.

(b) This Assignment of Trademark (including any claim or controversy arising out of or relating to this Assignment of Trademark) shall be governed by the law of the State of New York without regard to conflict of law principles that would result in the application of any law other than the law of the State of New York (other than Section 5-1401 of the General Obligations Law). The parties hereto agree that any disputes which may arise out of this Assignment of Trademark which relate to either party's rights and/or obligations hereunder shall be resolved in accordance with the provisions contained in the Asset Purchase Agreement.

(c) This Assignment of Trademark may be amended or modified only by a written instrument executed by all of the parties hereto.

(d) If any term, provision, covenant or restriction of this Assignment of Trademark is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy such determination shall not affect the enforceability of any others or of the remainder of this Assignment of Trademark. Upon such determination that any provision of this Assignment of Trademark (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Assignment of Trademark so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

(e) This Assignment of Trademark may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Trademark to be executed by their respective officers thereunto duly authorized as of the date first above written.

RELIANT PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

JOSEPH ZAKRZEWSKI
CHIEF OPERATING OFFICER



GUARDIAN II ACQUISITION
CORPORATION

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO ASSIGNMENT OF TRADEMARK]

STATE OF New Jersey
COUNTY OF Summit

On this 18th day of August, 2006, before me personally appeared Joseph Zakezanski to me personally known, who, being duly sworn, did say that he/she is the COO of Reliant Pharmaceuticals, Inc., and that he/she duly executed the foregoing instrument for and on behalf of Reliant Pharmaceuticals, Inc., being duly authorized to do so and that said individual acknowledged said instrument to be the free act and deed of said company.

Theresa H. Caldwell
Notary Public

THERESA H. CALDWELL
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 6, 2009

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2006, before me personally appeared _____ to me personally known, who, being duly sworn, did say that he/she is the _____ of Guardian II Acquisition Corporation and that he/she duly executed the foregoing instrument for and on behalf of Guardian II Acquisition Corporation being duly authorized to do so and that said individual acknowledged said instrument to be the free act and deed of said company.

Notary Public

IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Trademark to be executed by their respective officers thereunto duly authorized as of the date first above written.

RELIANT PHARMACEUTICALS, INC.

By: _____

Name:

Title:

GUARDIAN II ACQUISITION
CORPORATION

By:  _____

Name: Dominick C. Colangelo

Title: VICE-PRESIDENT

[SIGNATURE PAGE TO ASSIGNMENT OF TRADEMARK]

STATE OF _____ }
 } ss
COUNTY OF _____ }

Notary Public

STATE OF MASSACHUSETTS }
 } ss
 COUNTY OF MIDDLESEX }

Carolyn A. Grasso
Notary Public
MY COMMISSION EXPIRES MARCH 5, 2010

EXHIBIT “C”



- ▶ Understanding Cholesterol
- ▶ Controlling Your Cholesterol
- ▶ How ANTARA Can Help
- ▶ Talking With Your Doctor
- ▶ Healthy Living
- ▶ Have You Started Taking ANTARA?
- ▶ Prescribing Information

▶ Information For Healthcare Professionals

On the path to healthy living.

GOOD CHOLESTEROL GOES UP,
TRIGLYCERIDES GO DOWN.



Other Sections to Explore...

- Screening Tool
- Treatment Tracker
- Lifestyle Tips

Do you have a
prescription
for ANTARA?

How ANTARA Works

Learn how treatment with **ANTARA** makes HDL-C (the good cholesterol) go up and triglycerides go "down under." **Find out more about how ANTARA Can Help.**

Ask your doctor whether **ANTARA** may be right for you.

More About Cholesterol

Understanding the ups and downs of the various types of cholesterol can be confusing. As you **learn more about cholesterol**, you'll see **how important treatment can be.**

Sign up for email updates today!

[Site Map](#) | [Contact Us](#) | [Glossary of Terms](#)

Important Safety Information

ANTARA is indicated as adjunctive therapy to diet to reduce elevated LDL-C, total-C, triglycerides, and apo B, and to increase HDL-C in adult patients with primary hypercholesterolemia or mixed dyslipidemia (Fredrickson Types IIa and IIb). ANTARA is also indicated as adjunctive therapy to diet for treatment of adult patients with hypertriglyceridemia (Fredrickson Types IV and V hyperlipidemia). Lipid-altering agents should be used in addition to a diet restricted in saturated fat and cholesterol when response to diet and nonpharmacologic intervention alone has been inadequate.¹

Improving glycemic control in diabetic patients showing fasting chylomicronemia will usually reduce fasting triglycerides and eliminate chylomicronemia thereby obviating the need for pharmacologic intervention. Markedly elevated levels of serum triglycerides (eg, >2,000 mg/dL) may increase the risk of developing pancreatitis. ANTARA therapy on reducing this risk has not been studied.¹

ANTARA is contraindicated in patients with hypersensitivity to fenofibrate, in patients with hepatic or severe renal dysfunction including primary biliary cirrhosis, in patients with unexplained persistent liver function abnormality, and in patients with preexisting gallbladder disease. Fenofibrate has been associated with increases in serum transaminases. Regular periodic monitoring of liver function should be performed, for duration of therapy, and therapy discontinued if enzyme levels persist above 3 times the normal limit. Fenofibrate may increase cholesterol excretion into the bile, leading to cholelithiasis. If cholelithiasis is suspected, ANTARA therapy should be discontinued. ANTARA may increase the effects of coumarin-type anticoagulants. Dosage adjustment based on frequent prothrombin time/INR determinations is advisable. Adverse events most frequently observed in clinical trials: abnormal liver function tests; respiratory disorder; abdominal pain; back pain; and headache.¹

ANTARA may occasionally be associated with pancreatitis, hypersensitivity reactions, and hematologic changes. Please see PRECAUTIONS section of Full Prescribing Information.¹

Reference 1. ANTARA Prescribing Information. Waltham, MA Oscient Pharmaceuticals, Inc; 2005.

Please see [full prescribing information](#).

This website and the information contained herein is intended for use by US residents only.

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EXHIBIT “D”



ANTARA BIOSCIENCES

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**open
diagnostics
platform**

unlimited horizons

Antara BioSciences Inc. is focused on the development, manufacture and sale of electrochemical chip-based nucleic acid detection and *in vitro* diagnostic products. Antara brings to market a proprietary diagnostics platform which replaces traditional detection methods with a pioneering combination of standard molecular biological techniques and electrochemical detection.

Antara's platform eliminates the need for sample labeling or amplification. Our platform allows our customers to use standard methods and reagents, thereby eliminating long ramp up times and the need to redesign existing research programs.



ANTARA BIOSCIENCES

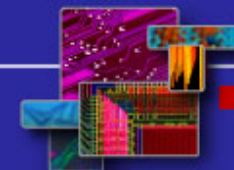
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about us



Mission Statement

Antara's mission is to (1) harness cutting edge technologies to make people healthier and safer; (2) produce innovative, robust and reliable products; and (3) earn and hold the respect and loyalty of our customers by providing products of the greatest possible quality and value to them.

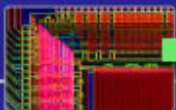


*electrochemical
chip-based
nucleic acid
detection*

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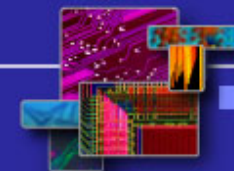
Novel Electrochemical Chip Technology

Proprietary electrochemical detection methodology allows rapid detection capability without sample labeling or amplification. Our systems provide equivalent or significantly higher sensitivity than currently available methods.[1] Additionally, our methodology enables shorter analysis times than currently available methods — as low as 15 min. Run times vary depending on the specific application.[2]

Antara's researchers, staff and management are dedicated to achieving the best possible results for its customers working in diverse research programs including human *in vitro* diagnostics [3], drug discovery, applied pharmacology, bio-effectiveness and pharmacogenomics.

- **Open Platform instruments and reagents** (chips, chemistry, etc.)
- **Custom Content Reagents**
- **Proprietary Application Development**
- **Integrated RFID-based chip/sample tracking**

1. The sensitivity achieved is typically application dependent.
2. Typical run times on the order of 30–90 minutes are common.
3. Antara does not currently sell any FDA-approved diagnostics and will seek appropriate FDA regulatory approval for its *in vitro* diagnostics products as they are developed.



*novel
electrochemical
chip
technology*

*technology overview
open platform
custom content reagents
proprietary applications
integrated RFID*

TECHNOLOGY

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- Eurys Genomics
- Genesys Technologies, Inc.
- Toshiba Corporation

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May 1, 2006

Antara BioSciences Moves into its New Facilities

March 10, 2006

Toshiba Licenses Key DNA Chip Patents to Antara



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Antara Biosciences, Inc.

2375 Garcia Avenue
Mountain View, CA 94043
info@antara-bio.com

Inquiries

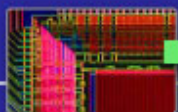
Antara welcomes inquiries concerning our products, technologies and services. For more information please contact us at:

info@antara-bio.com.

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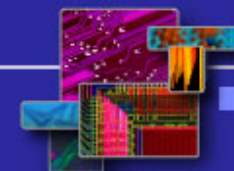
technology

The Philosophy of Antara's Open Platform Instruments and Reagents

You should not be required to change or adapt your research program just to be able to use an instrument or tool — the instrument should be adaptable to your research. Our systems have been designed as an "open platform" meaning they are readily adaptable to most research programs, employing standard and commonly used reagents, methodologies and protocols.

The Antara system has three basic elements:

1. The Quantum IQ (Q-IQ)[™] Electrochemical Analyzer
2. Universal Q-IQ[™] Electrochemical Chips
3. Customizable NA-BP reagents



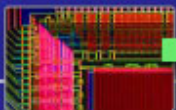
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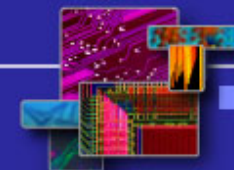


technology

Antara's Custom Content Reagents

Most researchers do not have the time nor the desire to customize their own chips. Understanding these time and resource constraints, we have assembled a highly proficient team that specializes in diagnostic/experiment design and chip customization. We can design and implement the reagents and methodologies you will need to get your work done, including using standard reagents used in the laboratory and applying them to the Antara system. Our custom application scientists are world-class with respect to their educational backgrounds, experience and technical qualifications. We welcome the opportunity to work with you to achieve your research goals.

[>> for more information](#)



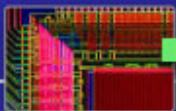
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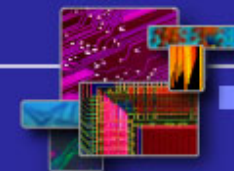
technology

Proprietary Application Development and Exclusive Field of Use Rights

Antara was co-founded by one of the leading patent attorneys in the fields of biotech and *in vitro* diagnostic patent law. As such, our corporate philosophies are in tune with the competitive environment in which our customers work; your need to protect your market rights and, where possible, to preclude your competitors from encroaching upon your valuable market share.

We offer proprietary application development and exclusive field of use rights to enhance the value of our products and services and to provide the market value you deserve. Exclusive sales are available for most fields of use, specific applications and specific target detection.

[>> for more information](#)



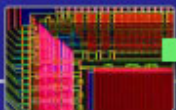
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custom content reagents
proprietary applications
integrated RFID

TECHNOLOGY

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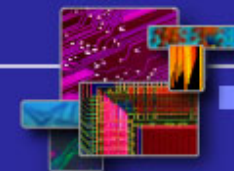
technology

Integrated RFID-Based Chip/Sample Identification & Tracking

Antara does not believe in just getting things done — it believes they should be done as well as possible. We are constantly striving to improve both our products and the field of diagnostics in general.

To this end, we have developed an integrated RFID-based sample tracking system that provides numerous benefits to our customers' business efforts. Each Antara Universal Electrochemical Chip can be uniquely identified through an integrated RFID tag located within the chip's plastic housing. At the time of chip derivatization, the tag can be encoded with information such as lot number, technician identity, reagents employed, date of manufacture, etc.

These RFID tags provide a facile means of enhancing your manufacturing, storage and shipping methods. More importantly, when placed within the Antara Q-IQ™ instrument, the RFID tag is automatically read, allowing the encoded information to automatically populate the relevant fields of the data output (electronic and/or hard copy), thereby reducing the frequency of operator input error as well as providing unambiguous product identification for our professionals in the unlikely case of the need to troubleshoot your results. The customizable nature of the RFID tags allows you to encode whatever unique information your business requires and provides a cost-effective way to increase the efficiency and integrity of your testing activities.



*novel
electrochemical
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technology overview
open platform
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proprietary applications
integrated RFID

TECHNOLOGY

EXHIBIT “E”



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23**[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

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Word Mark ANTARA BIOSCIENCES

Goods and Services IC 010. US 026 039 044. G & S: Medical diagnostic apparatus

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.01.06 - Stars with rays or radiating lines
01.09.05 - Atomic models; Molecular models
01.09.25 - Asteroids; Atoms; Meteors
01.15.04 - Explosions; Fireworks display; Sparks

Serial Number 77061718

Filing Date December 11, 2006

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) **ANTARA BIOSCIENCES** INC. CORPORATION DELAWARE 2375 Garcia Avenue Mountain View CALIFORNIA 94043

Attorney of Record Therese Finan

Description of Mark The mark consists of Expanding horizon design plus word mark.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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23**[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

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Word Mark ANTARA BIOSCIENCES
Goods and Services IC 009. US 021 023 026 036 038. G & S: Scientific and technical apparatus
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 01.01.06 - Stars with rays or radiating lines
01.09.05 - Atomic models; Molecular models
01.09.25 - Asteroids; Atoms; Meteors
01.15.04 - Explosions; Fireworks display; Sparks
Serial Number 77061714
Filing Date December 11, 2006
Current Filing Basis 1B
Original Filing Basis 1B

Owner (APPLICANT) **ANTARA BIOSCIENCES** INC. CORPORATION DELAWARE 2375 Garcia Avenue Mountain View CALIFORNIA 94043

Attorney of Record Therese Finan

Description of Mark The mark consists of Expanding horizon design plus word mark.

Type of Mark TRADEMARK

Register PRINCIPAL

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23**[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

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Word Mark	ANTARA BIOSCIENCES
Goods and Services	IC 042. US 100 101. G & S: Scientific and technological services and related research and design. FIRST USE: 20060331. FIRST USE IN COMMERCE: 20060331
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.06 - Stars with rays or radiating lines 01.09.05 - Atomic models; Molecular models 01.09.25 - Asteroids; Atoms; Meteors 01.15.04 - Explosions; Fireworks display; Sparks
Serial Number	77061710
Filing Date	December 11, 2006
Current Filing Basis	1A
Original Filing Basis	1A

Owner (APPLICANT) **ANTARA BIOSCIENCES** INC. CORPORATION DELAWARE 2375 Garcia Avenue Mountain View CALIFORNIA 94043

Attorney of Record Therese Finan

Description of Mark The mark consists of Expanding horizon design plus word mark.

Type of Mark SERVICE MARK

Register PRINCIPAL

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23**[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

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ANTARA BIOSCIENCES

Word Mark	ANTARA BIOSCIENCES
Goods and Services	IC 010. US 026 039 044. G & S: Medical diagnostic apparatus
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	77061704
Filing Date	December 11, 2006
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) ANTARA BIOSCIENCES INC. CORPORATION DELAWARE 2375 Garcia Avenue Mountain View CALIFORNIA 94043
Attorney of Record	Therese Finan

Type of Mark TRADEMARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[PREV LIST](#)[CURR LIST](#)[NEXT LIST](#)[FIRST DOC](#)[PREV DOC](#)[NEXT DOC](#)[LAST DOC](#)[| HOME |](#) [SITE INDEX|](#) [SEARCH |](#) [eBUSINESS |](#) [HELP |](#) [PRIVACY POLICY](#)



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23**[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

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ANTARA BIOSCIENCES

Word Mark	ANTARA BIOSCIENCES
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Scientific and technical apparatus
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	77061697
Filing Date	December 11, 2006
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) ANTARA BIOSCIENCES INC. CORPORATION DELAWARE 2375 Garcia Avenue Mountain View CALIFORNIA 94043
Attorney of Record	Therese Finan

Type of Mark

TRADEMARK

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ANTARA BIOSCIENCES

Word Mark	ANTARA BIOSCIENCES
Goods and Services	IC 042. US 100 101. G & S: Scientific and technological services and related research and design. FIRST USE: 20060331. FIRST USE IN COMMERCE: 20060331
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	77061678
Filing Date	December 11, 2006
Current Filing Basis	1A
Original Filing Basis	1A

Owner (APPLICANT) **ANTARA BIOSCIENCES** INC. CORPORATION DELAWARE 2375
Garcia Avenue Mountain View CALIFORNIA 94043

Attorney of Record Therese Finan

Type of Mark SERVICE MARK

Register PRINCIPAL

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ANTARA

Word Mark	ANTARA
Goods and Services	IC 010. US 026 039 044. G & S: Medical diagnostic apparatus
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	77061669
Filing Date	December 11, 2006
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) ANTARA BIOSCIENCES INC. CORPORATION DELAWARE 2375 Garcia Avenue Mountain View CALIFORNIA 94043
Attorney of Record	Therese Finan

Type of Mark

TRADEMARK

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ANTARA

Word Mark	ANTARA
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Scientific and technical apparatus
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	77061658
Filing Date	December 11, 2006
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) ANTARA BIOSCIENCES INC. CORPORATION DELAWARE 2375 Garcia Avenue Mountain View CALIFORNIA 94043
Attorney of Record	Therese Finan

Type of Mark TRADEMARK

Register PRINCIPAL

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ANTARA

Word Mark	ANTARA
Goods and Services	IC 042. US 100 101. G & S: Scientific and technological services and related research and design. FIRST USE: 20060331. FIRST USE IN COMMERCE: 20060331
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	77061782
Filing Date	December 11, 2006
Current Filing Basis	1A
Original Filing Basis	1A

Owner (APPLICANT) **ANTARA BIOSCIENCES** INC. CORPORATION DELAWARE 2375
Garcia Avenue Mountain View CALIFORNIA 94043

Attorney of Record Therese Finan

Type of Mark SERVICE MARK

Register PRINCIPAL

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Oscient Pharmaceuticals Corporation and Guardian II Acquisition Corporation

(b) County of Residence of First Listed Plaintiff Middlesex, Massachusetts
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas H. Kovach (#3964), Pepper Hamilton LLP, 1313 Market Street, P.O. Box 1709, Wilmington, DE 19899 (302) 777-6505

DEFENDANTS

Antara Biosciences Inc.

County of Residence of First Listed Defendant New Castle, Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 1051 through 1137

Brief description of cause:
Action for Trademark Infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/04/2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____